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OFFICE OF PETITIONS

In re Application of
Wheeler, et al.
Application No. 09/825,450
Filed: April 3, 2001
Attorney Docket No. L0562/7015

: DECISION DISMISSING
: PETITION

This is a decision on the petition filed March 15, 2002 (certificate of mailing date March 7, 2002), requesting that the above-identified application be accorded a filing date of April 2, 2001.

Petitioners allege that the application was deposited in Express Mail service on April 2, 2001. However, the "date-in" on Express Mail mailing label no. EL711223025US is missing.

Paragraph (a) of 37 CFR 1.10 states that:

Any correspondence received by the Patent and Trademark Office (Office) that was delivered by the "Express Mail Post Office to Addressee" service of the United States Postal Service (USPS) will be considered filed in the Office on the date of deposit with the USPS. The date of deposit with the USPS is shown by the "date-in" on the "Express Mail" mailing label or other official USPS notation. If the USPS deposit date cannot be determined, the correspondence will be accorded the Office receipt date as the filing date. See § 1.6(a).

(Emphasis supplied). Paragraph (d) of 37 CFR 1.10 states that:

Any person filing correspondence under this section that was received by the Office and delivered by the "Express Mail Post Office to Addressee" service of the USPS, who can show that the "date-in" on the "Express Mail" mailing label or other official notation entered by the USPS was incorrectly entered or omitted by the USPS, may petition the Commissioner to accord the correspondence a filing date as of the date the correspondence is shown to have been deposited with the USPS, provided that:

- (1) The petition is filed promptly after the person becomes aware that the Office has accorded, or will accord, a filing date based upon an incorrect entry by the USPS;
- (2) The number of the "Express Mail" mailing label was placed on the paper(s) or fee(s) that constitute the correspondence prior to the original mailing by "Express Mail"; and
- (3) The petition includes a showing which establishes, to the satisfaction of the Commissioner, that the requested filing date was the date the correspondence was deposited in "Express Mail Post Office to Addressee" service prior to the last scheduled pickup for that day. Any showing pursuant to this paragraph must be corroborated by evidence from the USPS or that came into being after deposit and within one business day of the deposit of the correspondence in the "Express Mail Post Office to Addressee" service of the USPS.

A grantable petition under 37 CFR 1.10(d) must include "a showing which establishes, to the

satisfaction of the Commissioner, that the requested filing date was the date the correspondence was deposited in "Express Mail Post Office to Addressee" service prior to the last scheduled pickup for that day." In addition, the showing "must be corroborated by evidence from the USPS or that came into being after deposit and within one business day of the deposit of the correspondence in the 'Express Mail Post Office to Addressee' service of the USPS."

The petition filed March 15, 2002 (certificate of mailing date March 7, 2001), does not include: a showing that the application was deposited in "Express Mail Post Office to Addressee" service prior to the last scheduled pickup for April 2, 2001 and the corroborating evidence required by the rule. The letter from the USPS employee does not state that the application was deposited on April 2, 2001 prior to the last scheduled pick-up.

In the absence of acceptable evidence, the filing date of the application remains the date it was received in the Office, namely April 3, 2001.

Accordingly, the petition is dismissed.

Pursuant to petitioners' authorization, deposit account no. 23-2825 will be refunded the \$130.00 petition fee.

Telephone inquiries specific to this matter should be directed to the undersigned at (703) 308-6712.

The application is being returned to Examining Group 3600 for examination in due course with the presently accorded filing date of April 3, 2001.



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